III. REMARKS

Claims 1-2, 5-16, 18-32, 34-43 and 45-50 are pending in this application. By this Amendment, claims 1, 13, 27, 31 and 40-42 have been amended. The above amendments and the following remarks are being made to facilitate early allowance of the presently claimed subject matter. Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claim priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

Entry of this Amendment is proper under 37 C.F.R. §1.116(b) because the Amendment: (a) places the application in condition for allowance as discussed below; (b) does not raise any new issues requiring further search and/or consideration; and (c) places the application in better form for appeal. Accordingly, Applicants respectfully request entry of this Amendment.

In the Office Action, claims 1-2, 5-16, 18-32, 34-43 and 45-50 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Replication Server Design Guide*, Sybase Inc., May 29, 1998, hereinafter "RepSvr," in view of Schwaller et al. (US Pat. No. 6,061,725), hereinafter "Schwaller." Applicants respectfully traverse this rejection for the reasons that follow.

First, Applicants submit that the suggested combination of prior art does not disclose or suggest each and every claimed feature. The claimed invention includes, *inter alia*, "a time duration of each repeating step is necessarily shorter than a preceding repeating step, and transaction service on the second server is paused until the providing step [,]" as recited in claim 1 and claimed similarly in claims 13, 27, 31 and 40-42. (Emphasis added). As described by the

specification of the current invention, an execution of a logged transaction on the target server, i.e., an update, occurs more quickly than the execution of the same transaction on the source server because the target server is not interacting with users. (*See* claim 1, "transaction service on the second (target) server [being] paused until the providing step.") Therefore, if an update is repeated, a duration of time for each of the later updates will necessarily be shorter than a prior update. The current invention repeats this process until a set point is met, e.g., the database on the target server is acceptably identical to that on the source server, and then transfers all users to the target server, i.e., it conducts a database migration. The target server provides transaction service only after its database is acceptably identical to that on the source server, i.e., "transaction service on the second server is paused until the providing step." (Claim 1, claimed similarly in claims 13, 27, 31 and 40 - 42). As will be discussed below, neither RepSvr, nor Schwaller disclose or suggest this claimed feature.

As the Office admits, "RepSvr does not specifically teach 'a time duration of each repeating step is shorter than [a] preceding repeating step'[.]" (Office Action at page 4). Contrary to the Office's assertion, however, Applicants submit that Schwaller does not overcome this deficiency of RepSvr. Schwaller discloses testing a performance of a communications network utilizing a test scenario. (*See* abstract.) In Schwaller, "[t]he duration of a test scenario is generally determined by the number of endpoint pairs 22, 24, the number of timing records to generate, the number of transactions per timing period, and the amount of data sent in each transaction." (Col. 10, lines 35-37). Schwaller discloses "[the] script may be varied to increase or decrease the size and frequency of transactions as well as changing the number of transactions

measured per measurement period." (Col. 3, lines 39-42). However, such "increase" or "decrease" are all part of the test scenario, which are designed "to simulate communications traffic between a plurality of selected endpoint nodes[.]" (Col. 7, lines 10-11). That is, the so called "increase" or "decrease" are all determined (and controlled) by a user who tests the communications network. Schwaller does not disclose or suggest that a transaction, a test scenario, or a script is necessarily shorter than a preceding one.

In addition, each test scenario (or script, or transaction) in Schwaller is a separate, random one, not necessarily related to one another, because each simulates different communication traffic situations between a plurality of selected endpoint nodes. As such, different test scenarios, or scripts, or transactions, are not repeating steps in Schwaller. In view of the foregoing, Schwaller simply intentionally changes the frequency of transactions and the number of transactions based on the testing requirements, but does not teach or suggest, *inter alia*, "a time duration of each repeating step is necessarily shorter than a preceding repeating step[,]" as the claimed invention does. (Claim1) (Emphasis added).

In the Office Action, the Office also asserts that "[it] would have been obvious to [one having ordinary skill] [*sic.*] in the art that a same transaction executed on a sever having no interactive user would complete [at an] [*sic.*] at a shorter duration than the execution occurs at a server having interactive user[.]" (Office Action at pages 14-15). Here, Applicants reserve the right to argue against the validity of this assertion. However, Applicants submit that this asserted "obviousness" by itself is not enough for a section 103 rejection, because the Office does not establish a suggestion or motivation to modify RepSvr so that a target server does not interact

with users during a database replication. To the contrary, as the Office cites, RepSvr attempts to achieve that "the hot standby database is ready for immediate use." (Office Action at page 15, *citing* RepSvr at page 4-2.) (Emphasis added). As such, RepSvr does not want to include a target server that does not interact with users during a database replication. The underlying reason is that RepSvr teaches only database replication, not database migration, and RepSvr does not transfer all users to a second database after replication. Therefore, RepSvr does not attempt to achieve that "transaction service on the second server is paused until the providing step[,]" e.g., the database on the target server is acceptably identical to that on the source server, as the claimed invention does. In view of the foregoing, the suggested combination does not disclose or suggest each and every claimed feature, and the Office fails to establish a *prima facie* case of obviousness.

Second, Applicants submit that there is no suggestion or motivation to combine Schwaller and RepSvr. RepSvr attempts to "[replicate] the data from its source database to a local database." RepSvr is not concerned with testing a performance of a communications network, as is Schwaller. As such, RepSvr does not need to, and is not desired to, design and use a test scenario with a test script. Whether to vary a script to decrease or increase the size and frequency of transactions to simulate communications traffic situations is out of the question for RepSvr. In contrast, RepSvr cannot manipulate the size and frequency of transactions if it is going to achieve the replication of data. Please note, RepSvr does not do any simulation and cannot manipulate a "test scenario." In view of the foregoing, an adoption of the Schwaller teachings regarding manipulating a test scenario, i.e., changing size and frequency of transaction,

will make RepSvr unsatisfactory for its intended purpose. Therefore, there is no suggestion or motivation to combine RepSvr and Schwaller.

The Office asserts that there is motivation or suggestion to combine "because both references teach database update on network[.]" (Office Action at page 5). Applicants carefully reviewed Schwaller, but do not find any evidence that supports the Office's above-identified assertion. Accordingly, Applicants respectfully request the Office provide detailed citations to support its assertion. In view of the foregoing, Applicants respectfully submit that the Office fails to establish a *prima facie* case of obviousness. Accordingly, Applicants request withdrawal of the rejection.

Claims 2 and 5-12 are dependent on claim 1, claims 14-16 and 18-26 are dependent on claim 13, claims 28-30 are dependent on claim 27, claims 32 and 34-39 are dependent on claim 31, and claims 44-50 are dependent on claim 42. These dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

IV. CONCLUSION

Applicants respectfully submit that the application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

Spencer K. Warnick
Reg. No. 40,398

Date: 10/25/05

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)